92-461

No.

Supreme Court, U.S.
FILED
SEP 11 1992
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In The

Supreme Court of the United States

October Term, 1992

LAWRENCE HANNER,

Petitioner,

vs.

MICHAEL P.W. STONE, Secretary of the Army,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

LAWRENCE HANNER
Petitioner, Pro Se
214 Amboy Street
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2625
Lutz Appellate Services, inc.
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QUESTIONS PRESENTED FOR REVIEW

This case presents important and unresolved issues of Federal Acts, denial of due process, exhausting of administrative procedures, and improperly withholding of agency documents arising out of the Freedom of Information Act (FOIA) , 5 U.S.C. § 552, of a federal agency's desire to deny petitioner his constitutional and statutory rights.

1. Should a federal court allow the agency to claim it produced all agency documents after the court has found the primary claim for relief as being 5 U.S.C. § 552(a)(4)(B) and then 35 days later, the agency produces documents that were not previously made available in the FOIA response?

2. Under the statutory scheme currently in effect in Federal Act, 5 U.S.C. §§ 7501 through 7504, the agency does harm this federal employee by denying "supporting material". This same Act states that the employee is entitled to this supporting material (5 U.S.C. § 7503(c)). However employees have no administrative procedures nor any judicial right[1] [petitioner was denied relief under § 7503(c)]to this supporting material when the agency does not supply it. The agency does harm petitioner and did deny him such material when he requested it. How can petitioner form a defense against this withholding of information while harm was incurred by him if the FOIA is not followed?

3. The statutory scheme currently in effect in 5 U.S.C. §§ 7501 through 7504 (Subchapter 1) does state that this supporting material along with the notice of decision, any order, etc. shall be

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1. (1) District Court 91-CV-74403; Order of Summary Judgment, September 20, 1991; Appellate Court 91-2178, affirmed February 13, 1992, rehearing en banc denied April 10, 1992, and (2) District Court 91-CV-75655; Order of Summary Judgment, January 15, 1992.

furnished [5 U.S.C. § 7503(c)] to the Merit System Protection Board (MSPB) upon its request. As the MSPB cannot act in any way on this material and petitioner has no administrative procedure to MSPB under Subchapter 1, it is of no use to MSPB to become a filing system for no purpose. How can petitioner overcome this barrier to his constitutional right, Fifth Amendment - Due Process Clause, of viewing the evidence used against him before judgment is rendered?

4. Should a federal court allow the agency to *diverge* from the Act, 5 U.S.C. § 552(a)(3), "Except with respect to... shall make the records *promptly available* to any person" and **5** U.S.C. § 552(a)(6)(C), "Any person making a request to any agency...the records shall be made *promptly available* to the person making the request" *by* ignoring the FOIA time limit (5 U.S.C. § 552(a)(6)(A)(i) in 10 days) and *stating*, "Appeals Court (FOIA. . . only obligates (agencies) to *provide access* to (documents) (Appendix A at 3a) and the District Court, "Defendant supports its motion for summary judgment by arguing that it has given or made available . . . all records maintained on him by the agency?" (Appendix B at 8a).

Petitioner, Lawrence Hanner, respectfully prays that a writ of certiorari be issued to review the decision of the United States Court of Appeals for the Sixth Circuit affirming the judgment entered in the United States District Court for the Eastern District of Michigan, Southern Division granting to respondent summary judgment on September 19, 1991. (No hearing was granted to petitioner.)

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No.

In the

Supreme Court of the United States

October Term, 1992

LAWRENCE HANNER,

Petitioner,

vs.

MICHAEL P.W. STONE, Secretary of the Army,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The United States Court of Appeals issued its opinion and order, June 15, 1992 (Appendix A at 1a). The United States District Court, Eastern District of Michigan, Southern Division, issued its opinion and order on September 19, 1991 (Appendix B at 4a). The United States District Court opinion stated petitioner's claim for relief was 5 U.S.C. § 552(a)(4)(B) (Appendix B at 7a), whereby I

ask the Court to enjoin the respondent from withholding documents, etc. which is stated in my complaint in paragraph 8.

STATEMENT OF JURISDICTION

Jurisdiction in the District Court was predicated upon 5 U.S.C. § 552(a)(4)(B). "On complaint, the district court of the United States in the district in which the complainant resides...has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency record improperly withheld from the complainant." The Court of Appeals for the Sixth Circuit entered judgment on June 15, 1992 affirming the District Court judgment. Pursuant to 28 U.S.C. §§ 1254 and 2101(c), this Court has jurisdiction to grant certiorari to review the judgment of the Court of Appeals.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. United States Constitution, Fifth Amendment - Due Process Clause

2. 5 U.S.C. § 552 - Freedom of Information Act

3. 5 U.S.C. Chapter 75, Subchapter 1 - Labor-Management and Employee Relations

STATEMENT OF THE CASE

Petitioner, Lawrence Hanner, was served a proposed notice of a 10-day suspension, adverse action, on November 15, 1990 with 15 days to respond. I asked to see the supporting material as I did no wrongdoing, was innocent and sought to defend myself. The agency denied my verbal request, so I sent two FOIA requests and one Privacy Act request (November 23 and 16, respectively) for

the agency documents by certified mail. The agency refused to respond within the 10-day statutory limit of the FOIA and passed judgment on me, without letting me view the material. One week after the judgment (I was found guilty) the agency delivered (January 3, 1991) the supporting material (Appendix F) they relied on prior to November 15, 1990. A review of the material led me to conclude not all documents were supplied. I filed a FOIA complaint in District Court on March 26, 1991 (pursuant to 5 U.S.C. § 552(a)(4)(B)) to obtain all agency documents. The agency replied in their answer (filed April 26, 1991) to complaint, "Affirmative Defenses No. 4, defendant has produced all requested documents."

I pursued the administrative procedures on the adverse action and obtained an arbitration hearing which was scheduled for July 31, 1991. At the start of the hearing, the agency presented the arbitrator a file. I was suspicious of the agency providing information not identical to what I had, and asked the arbitrator if I could see the file. I found at the start (front) of the file new documents (two) (Appendix C at 11a and 12a) that were not in the FOIA response. I told the arbitrator this and he asked the agency if this was so. I told the arbitrator that I had the constitutional right to view all evidence *before* the hearing. He agreed and postponed the hearing. (It was never held.)

On July 30, 1991, respondent filed a motion for summary judgment. On August 6, 1991, I replyed to respondent's motion and informed the court of the new evidence found at the arbitration hearing. Respondent then filed the agency arbitration file in a motion on August 13, 1991 (Appendix D at 13a). This contained the missing two documents (Appendix C at 11a and 12a) the agency withheld in its FOIA response (Appendix F at 23a) (the agency never claimed an exemption). I submitted a motion that identified these missing documents and asked for costs on August 20, 1991 (Appendix E at 19a). The district court ***refused*** to consider

my motion (Appendix E) in its order and opinion (September 19, 1991 Appendix B at 4a).

Even though the agency submitted to the court (through its counsel, the Justice Department) both the *response to the FOIA* (Appendix F) and its *Arbitration Agency File* (Appendix D at 15a), which both replied and affirmed the agency support material to the 10-day adverse action, and each contained relevant material that the other lacked, and that the petitioner informed the district court on August 20, 1991, by a filed motion (Appendix E), of these documents, the district court *refused* to consider this motion and the identification of the documents in its opinion and order issued 30 days later on September 19, 1991.[2]

Petitioner has identified to the district and appeals courts, the agency documents that were withheld (Appendix C at 11a and 12a). (Petitioner claims more document(s) are withheld.)

REASONS FOR GRANTING THE WRIT

1. The FOIA is an act broadly conceived (*EPA v. Mink*, 410 U.S. 73 at 80) and its basic policy is in favor of disclosure (*Department of Air Force v. Rose*, 425 U.S. 352 at 361). "But, unless the requested material, falls within one of these nine statutory exemptions, FOIA requires that records and material in the possession of federal agencies be made available on demand to any member of the general public." *NLRB v. Robbins Tire & Rubber Company*, 437 U.S. 214 at 221. However, in the district court opinion (Appendix B at 8a), Judge Patrick Duggan diverges from the Act and the associated supreme court decisions, by deleting the requirement of "*available on demand*".

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2. Motions filed by petitioner on July 18 and August 6, 1991, by respondent on July 30, 1991 were identified in the court's order and opinion.

Judge Duggan states, "In sum defendant (respondent) has informed the court that the items identified in plaintiff's complaint, have been made available to him, are not in the possession of the agency, or are not properly subject to the FOIA." Judge Duggan has allowed the respondent to submit documents after the complaint is filed as a FOIA response. Petitioner complains that this is a violation of the FOIA Act intent and against current judicial policy.

The appeals court also drops the "available on demand" as it states(Appendix A at 3a), "His assertion lacks merit because the FOIA does not obligate agencies to created or retain documents; it only obligates them to provide access to those which it has in fact created." Again, petitioner complains that this is a violation of the (FOIA) Act intent and of judicial policy.

2. Adverse Action - Subchapter I of 5 U.S.C. Chapter 75, was conceived in the Civil Service Reform Act (CSRA)[3] (1978) of which, "Streamlines the process for dismissing and disciplining federal employees." (CSRA, page 2) Also, "Statutory due process rights in adverse action are extended to all competitive service employees, not just veteran preference eligibles." (CSRA,page 46, Section 204) Further, CSRA, page 47, Section 7503(b), "These include the rights currently provided by statute. . . It is expected that, by regulation OPM wlll provide employees the right to review material on which the agency has relied on in proposing an action." So Congress gave statutory due process rights in adverse actions and expected OPM to put up the regulation. OPM didn't, but, "*Copies* of . . . supporting material. . .shall be furnished to. . .the employee affected upon the employee request." (5 U.S.C. § 7503(c)).

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3. Civil Service Reform Act of 1978, P.L. 95-454, U.S. Code Congressional and Administrative News, Vol. 4, p. 2723.

However, I have found in two separate federal court cases, (of proposed suspension) (*see* footnote - page 1) that when the agency denied me *copies of supporting material* that I have no *statutory* rights, administrative rights, due process or otherwise (under CSRA) to gain these copies. So the *FOIA is my sole statutory* hope to gain this material. So when using the FOIA to gain this material, it must be "on demand" as the agency will not give up the material per 5 U.S.C. § 7503(c). Further, the agency sets a response time of 15 days to reply (these are calendar days). The FOIA time period is 10 days (excluding weekends, holidays) with a total time of 14 calendar days to respond. If I sent my FOIA the day after receiving my notice, the agency could respond to the request and pass judgment on the same day. I currently have *no statutory rights* to view "copies of the material" in a timely manner to form a defense. The judicial proclamation of Justice Marshall in 437 U.S. 214 at 221, is paramount to federal employees when he states, "But unless the requested material . . . FOIA requires that records and material . . . be made available on demand. . .general public." The FOIA is my only expeditious remedy to obtain copies of material used against me. Unless this is held, the agency is the lord and the employee the servant, while the public pays.

3. The United States Constitution, Fifth Amendment - Due Process Clause - gives all citizens the right to view the evidence (and witness) brought against them. For an efficient government, employer and employee disputes should be resolved quickly. Since the CSRA was codified, any due process of 5 U..S.C. Chapter 75, Subchapter I, has been eliminated with no appeal rights to MSPB or judicial process. *The employee is defenseless to force management to follow the law.* Relief may be found in adding laws, regulations or new departments all of which cost scarce resources. Should a *precedent* be set that would *mandate* agency disclosure of the record and all parts thereof, on demand of a FOIA request, federal employees would have statute due process of evidence and suspicious agency activity may be reduced.

Petitioner was able to use some administrative procedures and did invoke arbitration in an effort to obtain relief. Upon arriving at the arbitration hearing, he saw the agency file for arbitration, that the agency presented to the arbitrator. Petitioner asked to see this file and the arbitrator agreed. This file contained some documents that were not submitted under the FOIA response. The agency submitted one set of documents for the FOIA response and a different set of documents for the arbitration hearing. Both sets were for the same subject. How can petitioner invoke any Federal Act to obtain all evidence brought against him when the agency disregards the FOIA and is immune from prosecution under 5 U.S.C. Chapter 75, Subchapter 1. Petitioner should have relief available without raislng a constitution question.

CONCLUSION

The federal district and appeals courts have not followed the FOIA basic policy of rapid disclosure and broadly conceived. The expeditious intent of Congress is seen in the 10-day time limit to comply to the Act. That no delay occur to a FOIA complaint the Act (5 U.S.C. § 552(a)(4)(C)) has the defendant responding in 30 days versus the 60 days of Fed. R. Civ. P. 12(a). The judicial policy of records and material be made available on demand (437 U.S. 214 at 221) enforces the rapid disclosure of information. That the agency claimed it has such records and materials prior to November 15, 1990 and waited over 45 days to respond, after receiving two certified FOIA requests, is indicative of their intent to disregard the Act(s) of Congress, the judicial policy of the land, the due process rights of myself and disregard the will of the citizenry. Such flagrant disobedience must be stopped immediately, punished and otherwise corraled if not eliminated so as to never impede such a basic, needed and good Act that the FOIA is. That a precedent be set that would give all federal employees statute due process, a right by the Constitution and supported by Congress is immediately required.

No such loss of rights to federal employees or the public at large, should be allowed to occur. That this Court should continue to impress upon the affected federal agency, the FOIA's intent and order it to produce all documents on demand, will follow the intent of Congress. That the relief of petitioner's complaint and motions before the trial court, be granted so that the agency's harm to him may be limited and offset. That a precedent be set so as to ensure federal employees have the constitutional right of the Fifth Amendment due process in statutory form so they may be able to view the evidence (and witness) that are brought against them.

For these reasons, I respectfully pray that a writ of certiorari be granted to review the decision of the Court of Appeals for the Sixth Circuit and that it be reversed.

Respectfully submitted,

LAWRENCE HANNER
Petitioner Pro Se

APPENDIX A - ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT FILED JUNE 15, 1992

No. 92-1157

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LAWRENCE HANNER,

Plaintiff-Appellant,

v.

M.P.W. STONE, Secretary of the Army,

Defendant-Appellee.

[stamped]
NOT RECOMMENDED FOR FULL TEXT PUBLICATION
Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit, if cited, a copy must be served on other parties and the Court.

This notice is to be prominently displayed if this decision is reproduced.

ORDER

BEFORE: KEITH and SUHRHEINRICH, Circuit Judges, and CONTIE, Senior Circuit Judge.

This pro se Michigan plaintiff appeals the district court's

summary judgment for defendant in this action brought pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Lawrence Hanner filed a complaint seeking to compel defendant to disclose information regarding disciplinary actions taken against him and an award of damages for defendant's failure to produce the documents which he had requested. Hanner is a former employee of the U.S. Army Tank Automotive Command (TACOM) in Warren, Michigan. Defendant is Secretary of the Army.

Hanner requested all laws, rules and regulations used to support each charge of misconduct which led to his discharge. He specified that each factual allegation must be produced in conjunction with the corresponding charge and relevant rule or regulation. He complained that the information provided by defendant did not conform to his request because it failed to show the corresponding relationships. Hanner further alleged that an attorney for defendant, one Paul Vitrano, had admitted to him that certain information had been withheld.

Upon review, we conclude that summary judgment was proper. *See* Fed. R. Civ. P. 56(c); *Canderm Pharmacal, Ltd. v. Elder Pharmaceuticals, Inc.*, 862 F.2d 597, 601 (6th Cir. 1988).

There exists no genuine issue of material fact. Hanner contended that defendant had not responded to his requests and that Paul Vitrano admitted as much to him. In support of the motion for summary judgment, defendant submitted copies of the documents provided to Hanner and affidavits that Vitrano had made no

admission and that Hanner had been given full access to his employment files. Hanner's assertions to the contrary are insufficient to defeat a motion for summary judgment. *See Goins v. Clorox Co.*, 926 F.2d 559, 561 (6th Cir. 1991).

Defendant is entitled to judgment as a matter of law. Hanner complained that the information provided by defendant did not conform to his request because it failed to show the corresponding relationships between rules and regulations and the allegations of misconduct. His assertion lacks merit because the FOIA does not obligate agencies to create or retain documents; it only obligates them to provide access to those which it has in fact created. *See Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136, 152 (1980); *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 161-62 (1975).

Accordingly, the district court's order is affirmed. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green, Jr.
Clerk

[stamped]
ISSUED AS MANDATE:
July 8, 1992
COSTS: NONE
FILING FEE: . . . . $
PRINTING: . . . . . $
TOTAL: . . . . . $

[stamped]
A TRUE COPY
Attest:
LEONARD GREEN, Clerk
By s/ Sue Johnson
Deputy Clerk

APPENDIX B - ORDER AND OPINION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION DATED SEPTEMBER 19, 1991

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CASE NO.: 91-CV-71271-DT
HON. PATRICK J. DUGGAN

LAWRENCE HANNER,

Plaintiff,

vs.

M.P.W. STONE,
Secretary of the Army,

Defendant.

ORDER

GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
AND
DENYING PLAINTIFF'S MOTION TO PRODUCE REQUESTED DOCUMENTS
AND
DENYING PLAINTIFF'S MOTION FOR AWARD OF COSTS

At a session of said Court, held in the U.S. District Courthouse, City of Detroit, County of Wayne, State of Michigan on SEP 19 1991.

Appendix B

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Defendant has filed a Motion for Summary Judgment. Plaintiff has filed a Motion to Produce Requested Documents and a Motion for Award of Costs.

For the reasons indicated in an Opinion issued this date,

IT IS ORDERED that defendant's Motion for Summary Judgment is hereby GRANTED.

IT IS FURTHER ORDERED that a plaintiff's Motion to Produce Requested Documents is hereby DENIED.

IT IS FURTHER ORDERED that plaintiff's Motion for Award of Costs is hereby DENIED.

s/ PATRICK J. DUGGAN
PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Pursuant to Rule 77(c),
Fed.R.Civ.P. copies mailed
this date to the
following parties:
Lawrence Hanner
Jennifer M. Gorland, A.U.S.A.

Appendix B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CASE NO.: 91-CV-71271-DT
HON. PATRICK J. DUGGAN

LAWRENCE HANNER,

Plaintiff,

vs.

M.P.W. STONE, Secretary of the Army,

Defendant.

OPINION

Plaintiff has filed a Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, claim against defendant, his former employer. [1] Presently before the Court are three motions: defendant's motion for summary judgment and plaintiff's motions for production of documents and for assessment of costs against defendant. Each party has filed a response to such motions. For the reasons which follow, this Court shall grant defendant's motion for summary judgment and deny plaintiff's motions for production of documents and assessment of costs. [2]

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1. Specifically, plaintiff has named M.P.W. Stone, Secretary of the Army as the defendant. Plaintiff was employed by an "agency" of the United States Army, the United States Army Tank Automotive Command.

2. Pursuant to Local Rule 17(1)(2), this Court shall decide such motions without oral argument.

Appendix B

I. Factual and Procedural Background

The present action is the second FOIA action instituted by plaintiff against defendant, his former employer. [3] In a nutshell, plaintiff's complaint alleges that defendant has denied his FOIA requests for various rules, regulations and personnel documents. Defendant maintains that it has provided all materials available to Hanner under the FOIA.

On July 9, 1991, this Court issued an Opinion which denied defendant's motion to dismiss plaintiff's suit pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. In its Opinion, this Court found that plaintiff, at paragraph 8 of his complaint, had stated a FOIA claim under 5 U.S.C. § 552(a)(4)(B). [4] In its Opinion, this Court also denied plaintiff's motion to compel production of documents.

II. Summary Judgment

To warrant the grant of summary judgment under Fed.R.Civ.P. 56, the moving party must show that "the pleadings, depositions, answers to interrogatories, admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106

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3. Plaintiff's first FOIA action, case number 90-CV-73484-DT, is still pending in this Court.

4. 5 U.S.C. §552(a)(4)(B) provides, in relevant part: "On complaint, the district court of the United States in the district which the complainant resides . . . , has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." Paragraph 8 of plaintiff's complaint asks for such relief.

S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). "Once the moving party has presented evidence sufficient to support a motion for summary judgment, the nonmoving party is not entitled to trial merely on the basis of allegations; significant probate evidence must be presented to support the complaint." *Goins v. Clorox Co.*, 926 F.2d 559, 561 (6th Cir. 1991). However, in determining whether there are issues of fact requiring a trial, "the inferences to be drawn from the underlying acts contained in the [affidavits, attached exhibits and depositions] must be viewed in the light most favorable to the party opposing the motion." *Matsushita Electric Industries Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986).

III. Discussion

Defendant supports its motion for summary judgment by arguing that it has given or made available to plaintiff all of the records maintained on him by the agency. Defendant further argues that the remaining records, rules and regulations which plaintiff alleges have been withheld from him are not in possession of the agency or are not materials which the agency is required to furnish him under the FOIA.

In sum, defendant has informed the Court that the items identified in plaintiff's complaint have been made available to him, are not in the possession of the agency, or are not properly subject to the FOIA. Also, defendant properly asserts that records not in its possession (or, indeed, records that never existed) and materials not subject to the FOIA, need not be produced by it for plaintiff. *See Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136, 151-53, 100 S.Ct. 960, 969-70, 63 L.Ed.2d 267 (1980). This Court concludes that defendant's arguments constitute a

proper showing that summary judgment is appropriate. *Celotex Corp.*, 477 U.S. at 323, 106 S.Ct. at 2548.

In response to defendant's arguments, plaintiff has come forward with nothing more than the bald and unsupported assertion in his response to defendant's motion that Paul Vitrano, an attorney advisor for defendant, admitted to him at an arbitration proceeding on July 31, 1991, that the agency had withheld information from him. Defendant has responded to plaintiff's assertion in his pleading with the affidavit of Paul Vitrano, and of Jo Ann Naylor, a person present at the arbitration proceeding. In their affidavits, Vitrano and Naylor state that Vitrano did not tell plaintiff that the agency had withheld information. (*See* Exhibit A and B to Defendant's Reply, Affidavits of Vitrano and Naylor.)

As plaintiff has come forward with nothing more than an unsupported assertion in a pleading, this Court concludes that he has failed come forward with "significant probate evidence," *Goins*, 926 F.2d at 561, demonstrating the existence of a genuine issue of material facts as to whether defendant has failed to properly comply with his FOIA requests. *Celotex Corp.*, 477 U.S. 324, 106 S.Ct. at 2553 (a properly supported summary judgment motion requires the nonmoving party to go beyond the pleadings and to demonstrate specific factual issues via affidavits, admissions on file, answers to interrogatories). Under such circumstances, summary judgment is appropriate.

This Court grants defendant's Motion for Summary Judgment. As this Court has granted summary judgment in favor of defendant, plaintiff's Motion to Order Defendant to Produce Requested Documents is moot and his Motion to Award is denied.

An order consistent with this Opinion shall issue forthwith.

Appendix B

s/ PATRICK J. DUGGAN
PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Pursuant to Rule 77(c),
Fed.R.Civ.P. copies mailed
this date to the
following parties:
Lawrence Hanner
Jennifer M. Gorland, A.U.S.A.

APPENDIX C - MEMORANDUMS DATED JULY 23, 1990 AND JULY 30, 1990

23 Jul 1990

ASSTA-KP(340a)

MEMORANDUM FOR CHIEF, ADMINISTRATIVE OFFICE(AMSTA-KS)

SUBJECT: Authorization to Sign Time Cards

1. Reference memo, AMSTA-KS, 18 Jul 90, SAB.

2. The following employees are authorized to certify T&A Reports:

Janet Montjar, GM-346-13

George Batcha, GS-830-13

s/ Phillip Cardon
PHILLIP CARDON
C, ILS Function

Appendix C

30 Jul 1990

AMSTA-KP(340a)

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Delegation of Authority

Mr. Phillip Cardon has been appointed Acting Deputy of Directorate for Readiness. During the period 30-31 Jul 90, there will be no Acting Chief of the ILS Function. Mr. Cardon will serve as Acting Deputy of Directorate for Readiness and Chief, ILS Function. If situation arises where you need to speak with Mr. Cardon, he is available in Bldg 229, in the Deputy Office. During the period 1-10 Aug 90, Ms. Montjar will be acting Chief of the ILS Function. During the period 13-31 Aug 90, Mr. George Batcha will be acting Chief of the ILS Function.

s/ Phillip Cardon
PHILLIP CARDON
C, ILS Function

DISTRIBUTION:
AMSTA-K
AMSTA-KA
AMSTA-KC
AMSTA-KL
AMSTA-KP
AMSTA-KS
CF:
AMSTA-PS (201File)
Ms. J. Montjar
Mr. G. Batcha

APPENDIX D - REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT FILED AUGUST 13, 1991

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

No. 91-CV-71271-DT
HON. PATRICK J. DUGGAN

Lawrence Hanner,

Plaintiff,

vs.

M.P.W. Stone,
Secretary of the Army,

Defendant.

REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff claims that defendant's motion for summary judgment is "moot" because, at an MSPB hearing concerning plaintiff's suspension from work, the agency attorney Paul Vitrano admitted that the agency had withheld documents plaintiff requested under FOIA. No such "admission" was ever made. (Exhibit A: Affidavit of Paul Vitrano at ¶4; Exhibit B: Affidavit of Jo Ann Naylor at ¶4.

Significantly, plaintiff has not identified a single document

covered by his FOIA requests that is in the agency's possession and has not been produced to plaintiff. The documents the agency produced at plaintiff's recent MSPB hearing, attached as Exhibit C, previously provided or made available to plaintiff. Most of these documents were produced to plaintiff in a December 31, 1991 response to plaintiff's administrative FOIA requests 90-131 and 90-140. Exhibit A: Affidavit of Paul Vitrano, paragraph 6 and Attachment 1, Enclosures List.[1]

Plaintiff cannot raise a legitimate issue of fact that demonstrates agency noncompliance with his FOIA requests. Accordingly, defendant's motion for summary judgment should be granted.

Respectfully submitted,

STEPHEN J. MARKMAN
United States Attorney

JENNIFER M. GORLAND
Assistant U.S. Attorney
817 Federal Building
Detroit, MI 48226
313/237-4747

Dated: August _ 1991

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1. Specifically, documents at tabs 3-5 and 8-19 of the MSPB submissions were produced respectively, as enclosure nos. 33, 34, 32, 29, 27, 26, 25, 22, 21, 16, 6, 2, 8, 19 and 1 in the FOIA response.

Appendix D

ARBITRATION

AGENCY FILE

IN THE MATTER OF: LARRY HANNER

FMCS ARBITRATION No. 91-14527
USTACOM and AFGE Local 1658

July 31 1991

Agency Attorney
Paul Vitrano, Esq. Legal Office
U.S. Army Tank-Automotive Command
AMSTA-LA
Warren, MI 48397-5000

Union Attorney
Jaroslaw Karpinsky, Esq.
1400 Fourteen Mile, Suite 101
Clawson, MI 48017-1499

TABLE OF CONTENTS

Tab	Date	Document Description	Source
1	23 Jul 90	Authorization to Sign Time Cards	Phillip Cardon
2	30 Jul 90	Delegation of Authority	Phillip Cardon
3	16 Aug 90	Memorandum to all Employees: Employees: Approval of Leave	George Batcha
4	16 Aug 90	Memorandum for Record	George Batcha
5	17 Aug 90	Memorandum for Record	George Batcha
6	23 Aug 90	Letter to Mr. Hanner	Donald R. Ellis
7	27 Aug 90	Delegation of Authority	George Batcha
8	27 Aug 90	Memorandum for Record	George Batcha

9	11 Sept 90	Memorandum for Hanner - Medical Document Requested	Nabih Rizk
10	20 Sept 90	Memorandum for Hanner - Conversion of AWOL	Nabih Rizk
11	24 Sept 90	Letter of Reprimand - Hanner	Nabih Rizk
12	11 Oct 90	Memorandum - Proposed Suspension - Hanner	Nabih Rizk
13	12 Oct 90	Memorandum for Hanner	Nabih Rizk
14	29 Oct 90	Memorandum to all Employees: Leave Approval Procedure	Nabih Rizk
15	30 Oct 90	Memorandum for Record - AWOL	Nabih Rizk
16	02 Nov 90	Memorandum - Insubordination	Nabih Rizk
17	29 Oct 90	Memorandum - Proposed Suspension and Supporting Documents	Nabih Rizk

18	12 Oct 90	Additional Information for Hanner Suspension	Nabih Rizk
19	15 Nov 90	Proposed Suspension Letter	Nabih Rizk
20	07 Dec 90	Review of Proposed Suspension	COL Dickinson
20	20 Dec 90	Review of Hanner's Response	COL Dickinson
21	27 Dec 90	Decision on Suspension	COL Dickinson

APPENDIX E - PLAINTIFF'S MOTION AND BRIEF IN SUPPORT THEREOF FILED AUGUST 20, 1991

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CIVIL CASE NO. 91-CV-71271-DT
HON. PATRICK J. DUGGAN

LAWRENCE HANNER,

Plaintiff,

-vs-

M.P.W. STONE,
Secretary of the Army

Defendant.

PLAINTIFF MOTION FOR

A. Cost: $25,000;

B. Fraud: Paul Vitranio; JoAnn Naylor;

C. Forgery: Defendant (Agency);

D. Acceptance of prior Plaintiff's Motions of: August 5, 1991; July 18, 1991; June 19, 1991; and May 28, 1991;

Appendix E

E. Judgment for Plaintiff.

Dated: August 18, 1991

Respectfully submitted,

s/ Lawrence Hanner
Lawrence Hanner
214 Amboy
Dearborn Heights, MI 48127
(313) 278-8146

Appendix E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAWRENCE HANNER,

Plaintiff,

-vs-

M.P.W. STONE,
Secretary of the Army

Defendant.

PLAINTIFF BRIEF IN SUPPORT OF MOTION

ISSUES PRESENTED

Defendant continues to deny Plaintiff required information under the FOIA 5 USC, Section 552. Defendant introduces forgery and fraud into this Court to harm Plaintiff. The continuance of harm to Plaintiff, by Agency, is done with intent, malice and conspiracy.

INTRODUCTION

Plaintiff has continually stated that Defendant has withheld information. That this was done, is proved by Defendant's own hand. Defendant has submitted, on August 13, 1991 to this Court, various documents. In Exhibit A, the Agency refers to a FOIA reply of December 31, 1990 to Plaintiff. This has 39 documents. In Exhibit C which was presented to the Arbitrator on July 31, 1991 and contains 27 documents and dates.

Appendix E

On reviewing only the first 2 documents of Exhibit C, it is found they do not exist in Exhibit A. Thus, the exclusion of information is proved by the Defendant again.

In reviewing Exhibit C, a forgery has been found. This document has been altered by the Agency, to harm Plaintiff. As the Agency uses this forgery to support another document, fraud has been committed. Plaintiff will not ask the Court to rule on the subject matter of these, but on the writing and numbers.

CONCLUSION

As we progress upon this case, the Agency's desire to harm the Plaintiff increases, Plaintiff again asks that:

1. the FOIA request be complied with as requested;

2. costs of $25,000;

3. prior motions, of Plaintiff, be granted;

4. an order denying Paul Vitranio and JoAnn Naylor any future use of fraud and/or forgery, and/or perjury upon the pain of removal from federal service;

5. judgment in Plaintiff's favor.

Dated: August 18, 1991

Respectfully sulmitted,

s/ Lawrence Hanner
Lawrence Hanner
214 Amboy
Dearborn Heights, MI 48127
(313) 278-8146

APPENDIX F - LETTER DATED DECEMBER 31, 1990 WITH ENCLOSURES

DEPARTMENT OF THE ARMY
UNITED STATES ARMY TANK-AUTOMOTIVE COMMAND
WARREN, MICHIGAN 48397-5000

December 31, 1990

AMSTA-KP (ILS) (340-17a)

Mr. Lawrence Hanner
214 Amboy Street
Dearborn Hts, MI 48127

Dear Mr. Hanner:

I am writing concerning your Freedom of Information Act (FOIA) Request Numbers 90-131 and 90-140 concerning documentation used to propose a 10-day suspension for you. FOIA Request Number 90-131 was forwarded to me for action by LTC Thomas R. Dickinson. Both FOIA Requests were initially received in the Directorate for Readiness on 14 December 1990.

Documents you have requested in FOIA Request Number 90-140 are forwarded as Enclosures 1 through 39. This same documentation is applicable for your FOIA Request Number 90-131.

Fees for FOIA Requests are determined on a case by case basis. Search and duplication costs for FOIA Requests Numbers 90-131 and 90-140 have been waived.

Appendix F

Sincerely,

s/ Nabih N. Rizk
Nabih N. Rizk
C, ILS Function

Enclosures

ENCLOSURES

DOCUMENT	SUBJECT	DATE
1. Ltr, AMSTA-KP, signed by Mr. N. Rizk	10-day suspension proposal notice	15 Nov 90
2. Memo, AMSTA-KP(ILS) signed by Mr. N. Rizk	Insubordination - Mr. Lawrence Hanner	2 Nov 90
3. Note to Mr. N. Rizk signed by Mr. Hanner	Movement to Mr. Travis' desk	31 Oct 90
4. OF41 signed by Mr. N. Rizk	Movement to Mr. Travis' desk	29 Oct 90
5. Memo, AMSTA-KP(ILS) signed by Mr. N. Rizk	AWOL - Mr. Lawrence Hanner	1 Nov 90
6. Memo, AMSTA-KP(ILS) signed by Mr. N. Rizk	AWOL & Insubordination Mr. Lawrence Hanner	30 Oct 90

7. MFR, signed by Constance A. Johnson	Observation of Mr. Hanner in Bldg 231, P&P Dir	30 Oct 90
8. Memo, AMSTA-KP (ILS) signed by Mr. N. Rizk	Proposed Suspension Mr. L. Hanner	29 Oct 90
9. Memo, Local 1658, signed by Mr. W. Griffin	Disciplinary Mtg, Mr. Larry Hanner 1330, Nov 1989	21 Nov 89
10. Ltr, AFGE Local 1658, signed by Ms. D. James	Relieving Mr. Hanner of P&P Union Activities	29 Nov 89
11. Ltr, AFGE Local 1658	List of AFGE Local 1658 Officers & Stewards	27 Jun 89
12. Memo, signed by Mr. N. Rizk	Conducting Union Business in P&P	16 Oct 90
13. Memo, AMSTA-PSM, signed by Ms. B. Thompson	Larry Hanner Union Rep	22 Oct 90

14. Memo for Chief, ILS Function, signed by Ms. K. Church	Annual Leave for Mr. Lawrence Hanner	28 Sep 90
15. Memo for Chief, ILS Function, signed by Mr. G. Batcha	FONECON from Mr. L. Hanner at approx 0715 hrs, 5 Oct 90	5 Oct 90
16. Memo to All AMSTA-KP (ILS) Employees, signed by Mr. N. Rizk	Leave Approval Procedures	29 Oct 90
17. Memo for Record, signed by Ms. J. Montjar	Request for Med Cert. - Upon RTD	29 Oct 90
18. MFR, AMSTA-PR, signed Ms. J. Naylor	Notification of Mr. Hanner's Contact/Presence in CPO by CPO employees	22 Oct 90
19. Memo, AMSTA-KP (ILS), signed by Mr. N. Rizk	Excessive Non-Productive Time & Interference with Management while Conducting Business	12 Oct 90

Appendix F

20. Memo, AMSTA-KP(ILS), signed by Mr. N. Rizk	Additional Info on Proposed Suspension for Mr. L. Hanner	12 Oct 90
21. Memo, AMSTA-ICB, signed by Mr. G. Zender	Employee - Mr. Lawrence Hanner	12 Oct 90
22. Memo, AMSTA-KP(ILS), signed by Mr. N. Rizk	Proposed Suspension for Lawrence Hanner	11 Oct 90
23. Memo, AMSTA-KP, signed by Mr. N. Rizk	AWOL	5 Oct 90
24. Memo, signed by Ms. K. Catenaro	Mr. Hanner's call as a Union Rep on Behalf of P&P Empl	2 Oct 90
25. Memo, AMSTA-KP(ILS), signed by Mr. N. Rizk	Ltr of Reprimand for Mr. Lawrence J. Hanner	24 Sep 90
26. Memo, AMSTA-KP(ILS) signed by Mr. N. Rizk	Conversion of AWOL to Sick Leave Status	20 Sep 90

27. Memo, AMSTA-KP (ILS), signed by Mr. N. Rizk	Medical Documentation for the period 1 Aug 90 - 4 Sep 90	11 Sep 90
28. Memo of Call to Liz Vermiglio from Dr. Burgess	RTD Date	28 Aug 90
29. Memo, AMSTA-KP (ILS) signed by Mr. G. Batcha	FONECON between Mr. L. Hanner & Mr. G. Batcha, Act C, ILS Function, AMSTA-KP (ILS), approx 0748 hrs, 27 Aug 90	27 Aug 90
30. Ltr, AMSTA-KS, signed by D. Ellis	RTD	23 Aug 90
31. SF 71, Application for Leave	Leave Slips for AMSTA-KP (ILS) Employees	Aug/Sep 90
32. Memo, AMSTA-KP (ILS) signed by Mr. G. Batcha	FONECON between Mr. L. Hanner and Mr. G. Batcha, Act C, ILS Function, AMSTA-KP (ILS), approx 1332 hrs, 17 Aug 90	17 Aug 90

33. Memo, AMSTA-KP(ILS), signed by Mr. G. Batcha	Approval of All Leave	16 Aug 90
34. Memo, AMSTA-KP(ILS), signed by Mr. G. Batcha, (Corrected Copy - date change)	FONECON w/Mr. L. Hanner & Mr. Batcha, Act C, ILS Function, AMSTA-KP(ILS), approx 0730 hrs, 14 Aug 90	16 Aug 90
35. Memo, AMSTA-KP(ILS), signed by Mr. G. Batcha	Same as above	14 Aug 90
36. SOP, AMSTA-KS, signed by Robert Swint for LTC T. Dickinson	Leave Administration	21 Nov 89
37. TACOMR 600-5, Chapter 5	Employee Conduct	16 May 88
38. TACOMR 600-5, Chapter 14	Leave Administration	25 Sep 87
39. TACOMR 600-5, Chapter 18	Discipline & Disciplinary Action	8 Nov 89